

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

January 13, 2004

Chairman S. Schiller called the meeting to order at 4:02 p.m., and roll was taken.

MEMBERS PRESENT: C. Kufta, S. Schiller, R. Hilt, E. Fordham, J. Clingman-Scott, B. Larson

MEMBERS ABSENT: None

STAFF PRESENT: D. Steenhagen, H. Griffith, B. Lazor

OTHERS PRESENT: N. McCarthy, Visiting Nurses; D. Spaiser, Architect from Siddock Group; W. McBride, 1349 Wesley; C. Holt, 160 John; H. Wierenga, Fleis & VandenBrink; J. Bultema, Great Lakes Marina; J. Bailey, Great Lakes Marina; D. Frye, 1824 Lakeshore.

APPROVAL OF MINUTES

A motion to approve the regular meeting minutes of October 14, 2003, was made by R. Hilt, supported by E. Fordham and unanimously approved.

OLD BUSINESS

Case 2003-14: Use Variance request to allow four RV's to be parked and inhabited at 1215 E. Apple Ave. for a period of three months, by Our Redeemer Lutheran Church (tabled).

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the use variance to allow four RVs at 1215 E. Apple Ave. be denied, based on that the findings of fact couldn't be proven, was made by J. Clingman-Scott, supported by R. Hilt and approved with B. Larson abstaining.

PUBLIC HEARINGS

Hearing, Case 2004-1: Variance request to reduce the rear setback to 6 feet 8 inches at 888 Terrace St., by Visiting Nurse Services, Inc. D. Steenhagen presented the staff report. The property is located at the corner of Webster Ave. and Terrace St. and contains two separate parcels. The property was formerly Hage's. Visiting Nurses has purchased the property and plans to move their offices there. They also plan to have a small hospice care facility on the site as well, and to lease out some additional office space. As part of the plan for the property, a small concrete block building behind the Hage's building will be torn down and that area will be used for parking. The additional lot across the alley, adjacent to Beerman's Music, will also be used for parking. The additional lot runs together with Beerman's own parking area to make one

larger parking lot. The Zoning Ordinance requires a 10-foot rear setback in the B-5 district. The ordinance also requires that all side and rear setbacks be greenspace. Since the main parcel of the subject property is on a corner, there are two front setbacks, off of Webster Ave. and Terrace St. Corner lots have two front setbacks, one rear setback and one side setback. Since the building faces and is addressed off of Terrace St., staff has determined that the rear setback is opposite the Terrace St. frontage, and the side setback is opposite the Webster Ave. frontage. The front setback on Terrace St. is nonconforming, since the existing building is located right up against the sidewalk. The front building setback on Webster Ave. is also nonconforming. However, the new parking area is required to meet current setbacks. The ordinance requires an average of 10 feet of greenspace for front setbacks. The plan shows that the parking area has a greenspace setback of 9 feet 6 inches, which increases to over 10 feet as it slopes in the corner to the east. Staff has determined that an average of 10 feet has been provided. The side setback (opposite Webster Ave.) is required to be 10 feet. The plan shows two drive entrances in this setback along with a 10-foot wide landscape island. This therefore meets the setback requirement. The rear setback (opposite Terrace St.) is shown as 6 feet 8 inches. The parking area contains two rows of parking spaces along with two, two-way maneuvering lanes. There also is a short row of four parking spaces and a drop off area adjacent to the building. The parking spaces are 18 feet long (the minimum requirement) and the maneuvering lanes are 22 feet wide (the minimum requirement). This only leaves the 6 feet 8 inches on the other side of the parking area for the rear setback.

Since the parking spaces and maneuvering lanes are all already at the minimum sizes allowed, the only way that the rear setback requirement could be met would be to reduce the number of parking spaces in the lot. It would not do any good to remove the four spaces adjacent to the building, as the proposed hospice court also extends the same length as those proposed spaces. One larger row of parking spaces in the lot would have to be removed, which would cut the total parking spaces in this lot down from 26 to 15. One other possibility would be to make the parking angled instead of perpendicular. This would require the maneuvering lanes to be one-way instead of two-way and would allow them to be 12 feet wide instead of 22 feet wide. The parking area would have to be reconfigured to adapt it to angled parking, and some spaces would also have to be lost. In order to maximize the allowable parking for the lot to the 26 proposed spaces, the rear setback must be reduced. The Zoning Ordinance requires that a minimum of 4 parking spaces be provided for the hospice care facility, and one space for every 400 square feet of usable floor area in the office areas. The architect for this project has estimated that 80% of the square footage in the offices is usable, and therefore the parking requirement would be 34 spaces, for a total of 38 required spaces for the property. The actual square footage of usable floor area may be less if specifically figured, rather than estimating, but this probably wouldn't affect the totals much if at all. The additional parking area across the alley contains 22 parking spaces. Therefore, the project currently shows 48 total spaces, 10 spaces more than required by the ordinance. If one row of the spaces in the larger parking lot were eliminated to meet the setback requirement, the property would have 37 total spaces, one less than the minimum requirement. Staff is unsure what the total number of spaces lost would be if the parking area were reconfigured for angled parking. This property is located in the Downtown Parking Overlay District. This means that up to 30% of the parking requirement for the property may be met with on-street parking. However, on-street parking is not allowed on either Terrace St. or Webster Ave. The overlay district also permits shared parking to be used to meet minimum

requirements, up to 1,000 feet away. Staff is unsure if the applicant has explored options for shared parking for the site. Any shared parking agreement must be in writing, must be irrevocable, and must not use up parking spaces required for the other use, unless the two uses operate at different times. The smaller parking area across the alley is directly adjacent to Beerman's parking area. There is no way to distinguish between the two parking areas. Realistically, this will function as a shared parking area since Visiting Nurses and Beerman's customers/clients/staff will park wherever available in the lot as a whole. Staff is not aware if a formal shared parking agreement exists between these two property owners. Visiting Nurses has stated that they have over 100 nurses who come and go, along with full-time office staff in their office and the area to be leased as well. They feel that they need the maximum amount of parking that they can have on their property in order to meet their parking needs. Staff has not received any phone calls or letters regarding this case.

N. McCarthy stated that they would hopefully be in the building by the end of summer. They feel that the proposed solution would be the best so they would lose as few parking spaces as possible. There would be more landscaping than what is currently there. D. Spaiser stated that if they were to go with the current zoning rules for setbacks, then they would lose parking spaces. He didn't feel that they should have angled parking because this would create one way traffic in the parking lot and this would be a problem especially when they need to have an ambulance at the property. E. Fordham asked where the ornamental fencing would be and what it would look like. D. Spaiser stated that it would be located at the Hospice Court and explained where that was at on the site plan. Ornamental fencing is something like wrought iron fencing, like what Hackley Hospital has. C. Kufra asked if they had a detailed drawing of what the landscaping would be. D. Spaiser stated that they didn't yet, but they would meet the zoning ordinance requirements. S. Schiller asked what kind of landscaping they would be required to have. D. Steenhagen explained that this is based on the front setback and this site doesn't have one. The landscaping would still need to be determined and she gave examples of what is usually required. She stated that it would be more than just grass. M. McBride asked if there is a price difference when it comes to angled parking versus what is currently there. D. Spaiser stated that it isn't much of a difference.

A motion to close the public hearing was made by R. Hilt, supported by J. Clingman-Scott and unanimously approved.

R. Hilt stated that this was a very old building. The owners are limited on what they can do since the building already exists. He felt that this was a good adaptive reuse of this property. E. Fordham clarified that there would only be a 3 ft. 2 inch difference of what couldn't be met for the setback requirement.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the building is an existing building and at the time when it was built, it was built adjacent to the sidewalk. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because they are purchasing a structure that currently doesn't conform

to the requirements. Since the building is stationary, there is limited space to do anything creative. They are creating more green space than currently exists so the property will be improved. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because it would actually help the neighboring business owners by preventing their people from over-flowing into the neighboring business' parking spaces. There will also be greenspacing that the neighboring businesses can also enjoy. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the structure is non-conforming. The zoning rules have changed and it is now incumbent upon them to try to conform to the new rules. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because there is no financial gain to be had. This has to do with having adequate parking for the employees, tenants, and visitors. There is no on-street parking available. The requested variance is the minimum action required to eliminate the difficulty because they have worked with staff to find a way to better conform with the ordinance. This was the best that could be done with what they had. The ordinance requires that they have 44 parking spaces and they are currently showing 48 spaces.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the rear setback to 6 feet 8 inches at 888 Terrace St., be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by R. Hilt, supported by J. Clingman-Scott and unanimously approved.

Hearing, Case 2004-2: Use Variance request to allow 955 W. Laketon Ave. to be rented as a 2-unit apartment building in the B-4, General Business, zoning district, by Michael and Caterina Holt. D. Steenhagen presented the staff report. This case came before the ZBA in June and July of last year. At that time the use variance was denied, an excerpt of the minutes from the previous two meetings was provided to the commission members. The Zoning Ordinance requires that if a variance is denied, the applicant must either wait a year before re-applying or must provide new evidence to the satisfaction of the Zoning Administrator. The applicant in this case has provided new evidence. Since the time of the variance denial, staff has worked with the applicant on the original enforcement case. The applicant understands that the options, if the variance were to be denied again, are to either convert the structure to a single-family residence, to convert the main floor to a commercial use with a residential apartment upstairs, or to leave the upstairs apartment vacant and only rent out the main floor apartment. The applicant has provided additional information which was provided to the commission members. At the previous meetings, it was stated that the ZBA did not feel that an attempt had been made to either market or rent out the main floor for a commercial use, to comply with the existing zoning. The applicant has provided letters from two commercial realtors addressing the potential marketing or use of the structure for commercial purposes. The applicant has also provided a survey of the other existing uses along this portion of Laketon Ave., as well as quotes for converting the structure into either a single-family structure or a commercial structure (main floor). In order to convert the structure into a single-family home, staff had indicated to the applicant that there would need to be one, common entrance to the home, and that the stairway

must be opened up to be accessible only from the first floor living space. The meters must also be consolidated. The residence would have to be rented to a single family and would have to function as a single-family home. Staff has received one e-mail which was provided to the commission members regarding this case. Staff has also received 2 phone calls. The first was from Bob Ferris of 1832 Dowd. He is opposed to this request because he felt it's hard to get good tenants in multi-unit dwellings. The second was from Randy Kyle of 936 W. Laketon who had questions and stated that it seemed like a nice house. He gave no opinion.

B. Larson asked if the variance were approved, does it remain with the applicant or stay with the property. D. Steenhagen stated that it would stay with the property. C. Holt went over the history of the home. She has owned the home for almost a year. She purchased the home with the intention of renting it as a duplex. She stated that there are other commercial buildings along Laketon that are currently vacant. The commercial buildings look commercial and not like a home. She felt that this duplex would be better served as a 2 unit since that is the way it was originally set up. J. Clingman-Scott asked how the property is currently being used. C. Holt stated that she has 1 family that is renting it, but they are using both parts of the home. D. Steenhagen added that structurally, this is a 2 unit home. R. Hilt asked why the request is for a variance to use the home as a 2 unit if both units are being used by 1 family now. C. Holt stated that she is breaking the rules now because both units are being used.

A motion to close the public hearing was made by R. Hilt, supported by B. Larson and unanimously approved.

B. Larson stated that he drives past this home almost daily. He went over a few of the currently vacant commercial buildings in this area. He stated that the green building by the Sand Bar is vacant and has been since it went up for sale over 3 years ago. He felt that since this is a home, it should be allowed to be residential and not be converted into a commercial site. J. Clingman-Scott stated that whether a commercial area is marketable or not doesn't have much to do with the zoning ordinance. Whether a commercial area is desirable or not doesn't have anything to do with the zoning application. It is obviously rentable as a single family home because there is a single family living in it. There are always costs when rehabilitation is involved. She felt that the estimate of \$14,000 was reasonable to convert this to as single family dwelling and there are ways to finance it that are affordable. She didn't see it as an impediment to make it a viable property for the owners. R. Hilt stated that this is not a zoning issue, but a realtor one. He added that the reason it had been used as a single family dwelling was because the previous owner had wanted to participate in the paint program the City offered. In order for him to do that, the home had to be single family. He felt that the realtor should be held liable for this.

A motion that the use variance to permit a 2-unit apartment building at 955 W. Laketon Ave., be denied, because it wasn't proven that the cost of rehabbing the home to single family was cost prohibitive, there weren't unique circumstances peculiar to this property, and the property hasn't proven to not be marketable since it is being rented by a single family currently, was made by J. Clingman-Scott, supported by C. Kufra, with discussion on the motion continuing.

B. Larson stated that he was inclined to support the variance request. D. Steenhagen added that if the applicant puts the money into converting the home into a single family dwelling and it ends

up being destroyed more than 50% or the bottom unit to be vacant more than 2 years, it would lose its nonconforming status. Should the building be destroyed, she wouldn't be allowed to rebuild the home. The property would need to conform with the current zoning requirements for the zoning district. She also knows of cases where owners haven't been able to get a loan on property that is nonconforming due to the fact that it wouldn't be able to be rebuilt if it is destroyed more than 50%. J. Clingman-Scott stated that with that information she would be inclined to approve the variance also because she encountered that portion of the zoning ordinance with a project she was involved with. Her original way of thinking was that \$14,000 isn't much of an investment for a house, but if the home were destroyed then the money couldn't be recouped because of the nonconforming status.

A motion to rescind the motion to deny was made by J. Clingman-Scott, supported by C. Kufta and unanimously approved.

C. Kufta stated that the applicant did do a great job of doing some homework, but he doesn't feel that this variance should be granted. The commission members are to take the ordinance they have in front of them and apply the facts that are given. The fact still remains that it wasn't persuasive. The purpose of both of the apartments to be occupied creates a return on the investment. He could sympathize with the applicant. The applicant does have the ability to still rent 1 of the apartments. J. Clingman-Scott stated that it is cost prohibitive to convert this home to commercial or to a single family dwelling which they may not be able to get financing for or insurance on or 1/2 of the benefit of the income that could be produced from the house. She questions if this would be an unfair burden to put on the applicant. C. Kufta stated that they would also need to look at what would be fair to the rest of the neighborhood. The reason for zoning is so people would have an idea of what they are getting into when they purchase property in any area.

The following findings of fact were offered: The property could not be used (put to a reasonable use) for the purposes permitted in that zone district because it would be cost prohibitive and not marketable per commercial realtors. The plight is due to unique circumstances peculiar to the property and is not to general neighborhood conditions because the house wasn't constructed to be commercial or to receive clients on a daily basis. The home was constructed as a 2-unit. The proposed use would not alter the essential character of the area and will not materially impair the purposes of this ordinance or the public interest because there are already other residential homes in the area. The alleged hardship is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the marketability of the building is affected negatively. By maintaining this zoning it will cause the home to be vacant and more prone to vandalism. The alleged hardship is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because it will help maintain the appearance and functionality of the property. The requested variance is the minimum action required to eliminate the hardship because this would be the most effective use for the property. The use variance does not permit a use specifically identified by this Ordinance as a use excluded from the particular zone in which requested because the use of a duplex isn't specifically listed as not being allowed under the current zoning. The extent to which the ordinance protect users or neighbors from threats to health, safety and welfare shall be considered. A use that seriously threatens the health of future

residents or neighbors is not a beneficial or allowable use. The proposed use is not considered to be a threat to health, safety or welfare of future residents or neighbors because the properties to the rear of this are residential. In no case shall a use that is a nuisance per se, or a use, which in that particular location constitutes a nuisance, be granted as a use variance. Such uses are not legal uses of the land. The proposed use is not considered a nuisance it would better coincide this the neighboring residential neighborhood.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the use variance to permit a 2-unit apartment building at 955 W. Laketon Ave., be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) The property owner must work on the existing code violations and obtain a Certificate of Compliance from the Inspections Dept. 3) Four paved, off-street parking spaces must be provided for the building, was made by B. Larson, supported by E. Fordham and failed with R. Hilt, S. Schiller, C. Kufta, and J. Clingman-Scott voting nay.

Hearing, Case 2004-3: Variance request to permit an 8-foot fence in the waterfront setback at 1920 Lakeshore Dr., by Great Lakes Marina & Storage. D. Steenhagen presented the staff report. The property is located on Lakeshore Dr. and contains the Great Lakes Marina. The cross-lake ferry is proposed to be located on the same property, to the north of the marina. Vehicular access to the ferry site will be off of a new drive with access to the existing drive at Lakeshore Dr. and Estes St. A site plan review is currently in process for the ferry site. The site plan was approved by the Planning Commission at their 12/11 meeting, with several conditions attached. The approval was also contingent on any other approvals (i.e., ZBA) that are necessary. The Planning Commission gave staff the authority to review and approve a revised site plan as long as all conditions are met and all necessary approvals obtained. Staff has not yet received a revised site plan for this site. At the Planning Commission meeting, the applicant brought up that the ferry terminal is required by the federal government to be fenced off. This was not shown on the originally submitted site plan, but the fence is proposed for the site. The Zoning Ordinance does not permit any fence to be erected within the waterfront setback area, which in the WM district is 75 feet from the ordinary high water mark. The ordinance also states that any fence in a waterfront yard is restricted to 3 feet in height. The applicant is proposing an 8-foot fence for the entire site. Staff does not have any information at this time as to the type of fence proposed. The applicant did state at the Planning Commission meeting that they were hoping not to use chain-link fencing. They did not state what type of fence they were proposing, and have not yet provided that information to staff. Staff feels that if a fence is permitted within the waterfront setback area, it should be an 80% open fence (such as chain-link or wrought iron). The intention of the restriction against fences in the waterfront setback area (and against tall fences in waterfront yards) was intended to prevent the shoreline from being 'walled off' from public view. This site is set back quite a ways from public view off of Lakeshore Dr., but there will be many people driving to or near the ferry site in order to watch the ferry arrive and depart. Staff feels that if a fence is permitted, then it should allow for this view without walling off the site. Staff is unsure exactly what the federal requirement is for a fence in this location. The City Attorney researched this and provided a letter to the commission members stating that he didn't find any federal regulations for this, but there would be a requirement from the Coast Guard and it is most likely that they wouldn't allow the ferry to operate without the fence. He would recommend allowing this variance. The applicant has mentioned that they wish an 8-foot fence

so that it does not need to have barbed wire (which is also not permitted by the Zoning Ordinance). Staff is not sure of what the federal government may require in terms of height or style of the fence in this area. Staff has received one phone call on this case, from William Flemen, 1835 Harrison Ave. He had questions about the type of fence proposed and stated that he does not want his view blocked.

H. Wierenga went over the different Acts that would require them to have the fencing. He also went over the site plan. He stated that most likely the fencing would be chain link with sharp loops at the top. They wouldn't be barbed wire. D. Frye had concerns regarding visibility of the lake from his home, but gave no opinion.

A motion to close the public hearing was made by B. Larson, supported by J. Clingman-Scott and unanimously approved.

C. Kufta stated that it is apparent that this is a unique situation and this should be approved. It would make sense that there is a need to control the access to this area. E. Fordham asked why they were proposing chain link instead of a decorative fencing. H. Wierenga stated that there are cost limitations which factored into this decision. This could change at a later date if there is income for it.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the use of this property for interstate travel/transit terminal requires defined secure areas for passenger control and safety as well as national security concerns. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because other parts of this property also have security needs. The marina and boat maintenance and storage areas are all restricted to the general public. Security at the terminal is required for public safety. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the use is similar to others in the area but with a much greater security requirement. Public access is not permitted in the docking and boarding areas. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the variance is for compliance to federal access and safety/security regulation that supercede local ordinance provisions. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the request is for the public safety and security. The installation of the improvement is an "extra" cost for the developer. The requested variance is the minimum action required to eliminate the difficulty because the proposed enclosed area is as small as possible for maximum control and ease of surveillance as required by the standards as well as cost.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow an 8-foot fence in the waterfront setback at 1920 Lakeshore Dr. be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property

must be complete within one year or the variance is void. 3) The fence must be a 'see through' (80% open) type and may not be taller than 8 feet in height. 4) No barbed wire will be permitted on the fence, was made by C. Kufta, supported by B. Larson and unanimously approved.

OTHER

Year-end Summary – D. Steenhagen provided the commission members with a copy of the 2003 case summary for the ZBA.

Van's Car Wash – S. Schiller stated that the City isn't enforcing the condition that the commission placed on the approval for their variance for a sign. He would like to have more information regarding why. He asked B. Larson to look into this. B. Larson stated that he would. C. Kufta asked when he may be able to get back with the other commission members with this information. B. Larson stated that it would be at the next meeting.

2004 Meeting Schedule – The commission members agreed to keep the same schedule of the second Tuesday of the month at 4 p.m. for this year.

There being no further business, the meeting was adjourned at 5:20 p.m.

hmg
1/13/04